

STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

**45 Fremont Street, 24th Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION

DATE: April 29, 2005 REGULATION FILE: RH02024219

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 3 of the California Code of Regulations Article 11.3, Sections 2534.40, 2534.41, 2534.42, 2534.43, 2534.44, 2534.45, 2534.46 and 2534.47. The regulation will establish filing requirements for applications to amend an insurer's variable authority. The regulations will also clarify which filings require the Commissioner's prior approval and which filings qualify for the treatment specified by Insurance Code Section 10506(h). In addition, the regulations will establish criteria for determining if a variable product involves a hazardous operation.

PUBLIC HEARING

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held at 1:30 p.m. on July 1, 2005 at the Department of Insurance Hearing Room, 22nd Floor, 45 Fremont Street, San Francisco, CA 94105. The sole purpose of such a hearing would be to address the merits of the proposed regulations.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code section 10506(h). Insurance Code section 10506(h) provides the authority for this rulemaking.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 4:00 p.m. on July 1, 2005. Please direct all written comments to the following contact person:

Gene Woo, Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4496

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Bruce Bozzo, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 538-4153

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 4:00 p.m. on July 1, 2005. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: woog@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Gene Woo and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Existing law permits the Commissioner to review filings for amendments to insurers' variable contract authority to see if hazardous operations exist. In 2002, the Legislature enacted Assembly Bill 2778 which amended Insurance Code Section 10506(h) to allow insurers to implement material changes, involving mutual funds underlying the variable contract separate accounts connected with a variable contract, without the Commissioner's approval or acknowledgement prior to implementation. Insurance Code Section 10506(h) permits the Commissioner to promulgate regulations to establish procedures for the review of these insurance products.

EFFECT OF PROPOSED ACTION

The proposed regulation specifies defines what material changes are still subject to the Commissioner's prior approval and it defines what constitutes a Mutual Fund Investment. The proposed regulation sets out criteria for the Commissioner to consider in determining if a variable product involves hazardous operations. The proposed regulation also establishes what constitutes a complete filing and the types of forms that should accompany a filing.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are life insurers. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance or reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

The proposed regulations will impose recordkeeping and compliance requirements on life insurers. Since 1997, insurers have been using Insurance Department Bulletin 97-2 to assist in filing material changes to their variable life or variable annuity authority. The recordkeeping and compliance requirements that were part of Insurance Department Bulletin 97-2 have been incorporated into these proposed regulations. The forms described in proposed Section 2534.47 are the same forms that have been used pursuant to Insurance Department Bulletin 97-2. These forms require insurers to certify that their filing complies with the proposed regulations and to describe the nature of the material change to their variable authority. As part of this process, insurers will be required to provide background material concerning their involvement in variable products and to disclose if they have been involved in any disciplinary actions in the variable products area. Insurers will be required to describe the nature of their variable product, new fund or new subaccount. In addition, insurers will be required to describe any other material change to their variable authority. As part of their filing, insurers may also be required to provide associated documents that had previously been filed with the Securities and Exchange Commission and certain documents relating to their variable products.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on the issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will not affect small businesses. Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), insurers are not small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available

for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right side of the page, find the major heading "Quick Links". In this section, scroll down until you see the subheading "Legal Information". Click on the link. On the next page at the top of the page, there will be a link entitled "Proposed Regulations". Click on the link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conduct a search or browsing for them by name.

To search, enter "RH02024219" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "10506(h)") or search by keyword (for example "AB 2778 Variable Product Regulations"). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posed will appear. Find in the list the "AB 2778 Variable Product Regulations" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those that have originally been made available but are sufficiently related to the action proposed, they will be available to the

public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: April 29, 2005

JOHN GARAMENDI
Insurance Commissioner

By _____
Gene S. Woo
Staff Counsel